

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

United States District Court
Eastern District of Washington

Nov 18, 2020

SEAN F. MCAVOY, CLERK

Harry Kenneth Waymoth

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

Washington Department of
Corrections

*(In the space above enter the full name(s) of the defendant(s).
If you cannot fit the names of all of the defendants in the
space provided, please write "see attached" in the space
above and attach an additional sheet of paper with the full list
of names. The names listed in the above caption must be
identical to those contained in Section IV. Do not include
addresses here.)*

Case No. 4:20-cv-05224-TOR

(To be filled out by Clerk's
Office only)

COMPLAINT

(Pro Se Prisoner)

Jury Demand?

☐ Yes

☐ No

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ☐ Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)

II. PLAINTIFF INFORMATION

Waymoth Harry K
Name (Last, First, MI)

Aliases

405656

Prisoner ID #

Coyote Ridge Corrections Center
Place of Detention

1301 N. Ephrata
Institutional Address

Franklin, Connell
County, City

WA
State

99326
Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1: Washington Department of Corrections
Name (Last, First)

Current Job Title

Current Work Address

County, City

State

Zip Code

Defendant 2: _____
Name (Last, First)

Current Job Title

Current Work Address

County, City

State

Zip Code

V. STATEMENT OF CLAIM

Place(s) of
occurrence:

Coyote Ridge Corrections Center

Date(s) of occurrence: _____

State which of your federal constitutional or federal statutory rights have been violated:

14th Amendment - Right to Equal Protection under Law

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

On multiple occasions since being incarcerated I have been pat searched by female officers, due to my past, this causes panic attacks. I filed my first grievance on 6-7-2019 in regards to an officers reaction to me being uncomfortable being touched by a female. (Exhibit A-1) I was told by Lt. Hollibaugh that I had no choice on the gender of the officer that searches me. Upon later research I found policy 420.310 which protects female inmates from pat search from male officers. On 2/18/20 I started the grievance process against this policy. Exhibits A-2, A-3, A-4 are the grievances filed.

I have a previous history of fear of females. (Exhibits B-1, B-2, B-3) I have provided copies of the relevant records from previous mental health records

highlighted areas and underlined. I have sought mental health assistance currently due to the physical toll on my body.

The panic attacks I suffer when leaving the Dining hall happen near daily and I have started having sustained chest pains. I have contacted medical for help with the chest pains and was given information on the physical toll and injuries to the body from continuous panic attacks. With daily panic attacks doing such damage to me, I believe it constitutes Cruel & Unusual Punishment.

DOC policy 100.500 I. The department prohibits discrimination or unfair / illegal treatment on the basis of national origin, race, color, religion, age, gender, marital status,...

DOC policy 420.310 II. D. Pat searches will be conducted by Trained employees / contract staff. Pat searches of female offenders will only be conducted by female employees / contract staff, except in emergent situations.

DOC policy 420.310 II. D. 2. When a male employee / contract staff pat searches a female offender, a report will be completed in the Incident Management Reporting System (IMRS) before the end of shift. The distribution will include the PREA Coordinator.

Washington Constitution Article XXXI §1. Equality not denied because of sex. Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

217 F.3d 333 Equal Protection. It is clearly established that a state violates the equal protection clause when it treats one set of persons differently from others who are similarly situated.

See Wheeler v. Miller 168 F.3d 241, 252 (5th cir. 1999)

VI. ADMINISTRATIVE PROCEDURES

WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.

Have you filed a grievance concerning the facts relating to this complaint? ☒ Yes ☐ No

If no, explain why not:

Is the grievance process completed?

☒ Yes ☐ No

If no, explain why not:

VII. RELIEF

State briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Due To physical harm done to my body caused by DOC inflicting actions that cause a panic attack I seek monetary compensation in the amount of \$750,000.

I also seek a court order mandating a policy change to protect all genders from cross gender searches.

VIII. PRISONER'S LITIGATION HISTORY

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in forma pauperis in federal court if that prisoner has “on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. §1915(g).

Have you brought any other lawsuits in state or federal court while a prisoner?

☐ Yes ☒ No

If yes, how many? _____

Number each different lawsuit below and include the following:

- Name of case (including defendants' names), court, and docket number
- Nature of claim made
- How did it end? (For example, if it was dismissed, appealed, or is still pending, explain below.)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

IX. PLAINTIFF'S DECLARATION AND WARNING

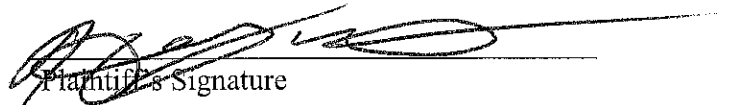
Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Plaintiff must sign and date the complaint and provide prison identification number and prison address.

11-13-2020

Dated


Plaintiff's Signature

Waymoth Harry K

Printed Name (Last, First, MI)

405656

Prison Identification #

1301 N. Ephrata

Prison Address

Connell

City

WA

State

99326

Zip Code

19680837



EMPLOYEE CONDUCT GRIEVANCE QUEJA ACERCA DE LA CONDUCTA DEL PERSONAL

| | | | | | | |
|---|------------------|-----------------|----------------------|--|--|---------------------------|
| Name: Nombre: | Last Apellido | First Nombre | Middle 2do Nombre | DOC Number Número DOC | Facility/Office Institución/Oficina | Unit/Cell Unidad/Celda |
| | Waymoth | Harry | K | 405656 | CRCC | BB61-2U |
| PART A - EMPLOYEE CONDUCT GRIEVANCE PARTE A - QUEJA ACERCA DE LA CONDUCTA DEL PERSONAL | | | | Date Typed / Fecha escrita a mano 6/28/2019 | Date Due / Fecha de vencimiento | |
| <p>I WANT TO GRIEVE: / QUIERO QUEJARME DE: On Friday May 31st at morning mainline I was asked to stand for search by officer Neason. I expressed I was uncomfortable having a woman search me and stood for a male officer instead. As I was walking away officer Neason stated "What a wierdo, wanting a guy to touch on them" I responded "I simply do not like to be touched by women against my will" Her respond was "no woman would want to touch you, you wierdo" I believe her derogatory comments of an insinuating sexual content is in violation of my rights as a prisoner. I feel I may need to file formal complaints about the facility due to the actions and comments of this officer</p> <p>SUGGESTED REMEDY/ REMEDIO SUGERIDO: I suggest she be transfered to a position to which she would not be regularly searching male inmates. Best remedy would be to transfer her to a women's facility.</p> | | | | | | |
| /s/ K. Hodgson | | K/H | | 6/18/2019 | /s/ Harry Waymoth | |
| Grievance Coordinator Signature | | Date | | Grievant Signature | Date | |
| Firma del Coordinador de quejas | | Fecha | | Firma del agraviado | Fecha | |

PART B - LEVEL II RESPONSE / PARTE B - RESPUESTA NIVEL II

Your level II grievance investigation was completed by Lieutenant D. Hollibaugh. During the investigation, you and Correctional Officer S. Nissen were interviewed.

During the investigation, Lt. Hollibaugh advised you on the search process and the expectations of both staff and offenders. The investigation determined that CO Nissen denied calling you a wierdo and that she does not use that term. However, Lt. Hollibaugh met with all response and movement officers and reminded them about being professional. There is insufficient evidence to support your claim of staff misconduct.

Superintendent, Community Corrections Supervisor, Field Administrator Signature
Firma del Superintendente, Supervisor de Reclusario Nocturno, Administrador de Correcciones Comunitarias

7-22-19
Date
Fecha

You may appeal this response by submitting a written appeal to the coordinator within five (5) working days from date this response was received.
Ud. puede apelar esta respuesta al enviar una apelación escrita al Coordinador dentro de cinco (5) días hábiles de la fecha de recibir esta contestación.

20696527



**LEVEL I - INITIAL GRIEVANCE
NIVEL 1 - QUEJA INICIAL**

| | | | | | | |
|------------------|------------------|-------------------------|----------------------|--------------------------|------------------------------|---------------------------|
| Name: NOMBRE: | Last APELLIDO | First PRIMERO NOMBRE | Middle 2DO NOMBRE | DOC Number NUMERO DOC | Facility/Office FACILIDAD | Unit/Cell UNIDAD/CELDA |
| | Waymoth | Harry | K | 405656 | CRCC | E A48-1L |

PART A - INITIAL GRIEVANCE/PARTE A - QUEJA INICIAL

Date Typed 02/26/20

Date Due

I WANT TO GRIEVE / QUIERO QUEJARME DE: DOC policy 420.310 #D and 420.310 II D2 are sexually biased and discriminatory towards male inmates. Instead of stating that only female inmates are protected from opposing gender searches, it should be worded in such a way as to make all inmates safe from opposing gender pat searches.

I feel extremely uncomfortable being searched by females and this policy removes my right to not be touched by someone of the opposite gender without my consent. As safety and security is an understandable issue, there are more than enough male officers to pat search the male inmate population.

SUGGESTED REMEDY / REMEDIO SUGERIDO: Policy wording be changed to protect all inmates rights, regardless of their gender class.

/s/ Carianne Shuster

02/24/20

/s/ Harry Waymoth

Grievance Coordinator Signature

Date

Grievant Signature

Date

FIRMA DE COORDINADOR DE QUEJAS

FECHA

FIRMA DE QUEJANTE

FECHA

PART B - LEVEL I RESPONSE / PARTE B RESPUESTA PRIMER NIVEL

Your investigation was completed by CS3 Gonzalez, G.

Policy 420.310 states;

All searches will be conducted in a professional manner, while recognizing privacy needs and avoiding unnecessary force, embarrassment, or indignity to the offender being searched.

If you feel at any time an officer conducting a pat search is in violation of this policy report it as you feel necessary.

At this time policy wording will not be changed and your remedy cannot be met.

Grievance Coordinator Signature
COORDINADOR DE QUEJAS

Date
FECHA

You may appeal this response by submitting a written appeal to the Coordinator within five (5) working days from date this response was received.
Ud. puede apelar esta respuesta al someter una apelación por escrito al coordinador dentro de cinco (5) días de trabajo de la fecha en que esta respuesta fue recibida.



LOG I.D. NUMBER

20696527

APPEAL TO LEVEL II
APELACIÓN AL 2DO NIVEL

| | | | | | | |
|--|------------------|-------------------------|----------------------|--------------------------|------------------------------|---------------------------|
| Name: NOMBRE: | Last APELLIDO | First PRIMERO NOMBRE | Middle 2DO NOMBRE | DOC Number NUMERO DOC | Facility/FACILIDAD Office | Unit/Cell UNIDAD/CELDA |
| | Waymoth | Harry | K | 405656 | CRCC | H A10-1L |
| PART A - INITIAL GRIEVANCE/PARTE A - QUEJA INICIAL | | | | Date Typed | 03/25/20 | Date Due |
| <p>I WANT TO APPEAL: If the regards are directed to professionalism then why is section D even put in policy? It is in place to protect DOC from sexual assault lawsuits by restricting the possible chance of a misconstrued pat search. I have read policy and it is discriminatory and needs to be changed. Changing the wording "male" and "female" to "opposed gender" solves this issue and protects DOC from lawsuits still. I still propose my previous remedy.</p> <p>SUGGESTED REMEDY:</p> | | | | | | |
| /s/ Gabriel Gonzalez | | GG | 03/25/20 | /s/ Harry Waymoth | | 03/20/20 |
| Grievance Coordinator Signature | | | Date | Grievant Signature | | Date |
| FIRMA DE COORDINADOR DE QUEJAS | | | FECHA | FIRMA DE QUEJANTE | | FECHA |

| | |
|--|---------------------------|
| PART B -LEVEL II RESPONSE/PARTE B RESPUESTA 2DO NIVEL | |
| <p>Your level 2 investigation was completed by CUS Chris Hicks.</p> <p>Policy 420.310 was reviewed during this investigation.</p> <p>You were interviewed regarding this investigation.</p> <p>Concur with level one response to this complaint. There will be no changing of policy wording at this time.</p> <p>A modification to Policy 420.310 SEARCHES OF OFFENDERS IS NOT BEING PROPOSED AT THIS TIME. <i>[Signature]</i></p> | |
| <i>[Signature]</i> Superintendent, Work Release Supervisor, Field Administrator Signature SUPERINTENDENTE | 4-1-2020 Date FECHA |
| <p>You may appeal this response by submitting a written appeal to the coordinator within five (5) working days from date this response was received. Ud. puede apelar esta respuesta al someter una apelación por escrito al coordinador dentro de cinco (5) días de trabajo de la fecha en que esta respuesta fue recibida.</p> | |

LOG I.D. NUMBER/NUM. DE REGISTRO

20696527


APPEAL TO LEVEL III
APELACIÓN AL 3ER NIVEL

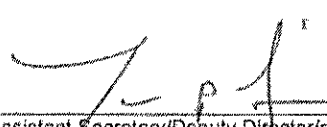
| | | | | | | |
|--|------------------|-----------------|---|---|--|---------------------------|
| Name: Nombre: | Last Apellido | First Nombre | Middle 2do Nombre | DOC Number Número DOC | Facility/Office Institución/Oficina | Unit/Cell Unidad/Celda |
| | Waymoth | Harry | K | 405656 | CRCC | H A10-1L |
| PART A - APPEAL TO LEVEL III PARTE A - APELACIÓN 3 ^{ER} NIVEL | | | Date Typed / Fecha escrita a mano 04/09/20 | | Due Date / Fecha de vencimiento | |
| <p>I WANT TO GRIEVE / QUIERO QUEJARME DE: I formally appeal to level 3. In my initial grievance I stated that policy 420.310 D and 420.310 D2 are sexually biased and discriminatory towards male inmates. I stated the wording needed changed to be able to protect all gender classes. Please reference previous grievances.</p> <p>SUGGESTED REMEDY / REMEDIO SUGERIDO: Change the words "Male" and "Female" to "Opposed gender".</p> | | | | | | |
| /s/ C. Shuster | | 04/07/20 | | /s/ Harry Waymoth | | 04/02/20 |
| Grievance Coordinator Signature Firma del Coordinador de quejas | | Date Fecha | | Grievant Signature Firma del agraviado | | Date Fecha |

PART B - LEVEL III RESPONSE/PARTE B - RESPUESTA 3^{ER} NIVEL

I reviewed your initial grievance as well as all appeals and responses.

C. Headley, Program Manager – Security Operations, also reviewed this grievance and provided this response:

I reviewed your initial grievance, your level two appeal and the response provided to you. In order to fully investigate your Level 3 appeal, I reviewed DOC Policy 420.310 Searches of Offenders, and the Department of Justice National Standards to Prevent, Detect and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA). DOC 420.310 is based on standards provided in the PREA Standards. Standard 115.15 Limits to Cross-Gender Viewing and Searches (c) states, "The facility shall document all cross gender strip searches and cross gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates." The Department of Corrections is in compliance with this standard throughout the agency, no further action will be taken with your grievance.


 Assistant Secretary/Deputy Director/designee
 Subsecretario/designado


 Date
 Fecha

Greater Lakes Mental Healthcare Harry Kenneth Waymoth (ID# 04091647,003)

| | | | |
|----------------------|----------------|-------------------------|------------|
| Client Name: | Harry Waymoth | Client ID: | 04091647 |
| Staff: | Tiffany Smorch | Date of Service: | 8/24/2016 |
| Service Code: | Peer Support | Time of Service: | 2:30 pm |
| Program: | AE | Duration: | 30 Minutes |

Consumer stated that he recently got fired from his job, and is also in jeopardy of losing his place. He rents a room in a duplex with friends, but he will not be able to stay if he can't pay rent in the future. Consumer said that he needs to have a consistent job, where he can pay bills on a regular basis. He also mentioned some interpersonal relationship issues with females and female friends. Consumer said that he fears females and does not understand where they come from sometimes.

Reported extraordinary events such as death, loss of housing/environment, relapse etc.: ☒ None Reported ☐ Yes, describe:

Interventions Used/Type of Therapy (if not checked above):

EBP 1

EBP 2

Psycho-education regarding diagnosis was provided during this session: ☐ Yes ☒ No

Session Review (response to interventions, plan of action):

CPC and consumer attended session. Consumer stated that he recently got fired from his job, and is also in jeopardy of losing his place. He rents a room in a duplex with friends, but he will not be able to stay if he can't pay rent in the future. Consumer said that he needs to have a consistent job, where he can pay bills on a regular basis. He also mentioned some interpersonal relationship issues with females and female friends. Consumer said that he fears females and does not understand where they come from sometimes. We discussed what led to consumer being fired, and how he handled the situation. We also discussed his main issue with transportation to get to and from work. He is trying to save up money to get a bus pass. He also mentioned having an anxiety attack yesterday, and we briefly discussed some coping skills. Consumer stated that he likes to watch supernatural and smoke marijuana. We are scheduled to meet again next week.

Electronically signed by: Tiffany Smorch, Certified P 08/24/2016 5:24:23PM

| | | | |
|---------------|--------------------|------------------|------------|
| Client Name: | Harry Waymoth | Client ID: | 04091647 |
| Staff: | Amy Vitacolonna | Date of Service: | 6/22/2016 |
| Service Code: | Individual Therapy | Time of Service: | 1:00 pm |
| Program: | AE | Duration: | 60 Minutes |

Interventions Used/Type of Therapy (if not checked above):

EBP 1

EBP 2

Client centered therapy and CBT utilized with client in order to develop tx goals and treatment plan.

Psycho-education regarding diagnosis was provided during this session:

☒ Yes

☐ No

Discussed the etiology of depression, symptomology, and pathology.

Session Review (response to interventions, plan of action):

Client attended tx session alone. Client was an active participant in treatment. Client centered therapy utilized to allow client to share history of abuse, sexual molestation, and death of his mother. Client was able to process feelings of loss, however, did not go too deep due to trauma associated with events and not that far into treatment. Discussed development of coping skills. Discussed tx goals, strengths and motivators for change. Client stated he has not had any serious homicidal ideation's in the past week.

06/27/2016 10:57:43AM

Harry reports "Sexual assaults was when I was younger by my mom, dad, and aunt...The physical assaults was like all my life starting from Kindergarten".

CPS/APS report made? ☒ N/A ☐ Yes ☐ No, explain below

Any other past or current trauma or adverse event reported? ☐ Denied ☒ Yes, describe below

Harry reports "I have been in car accidents...I have been in a total of 33 accidents and only 3 times I was a driver, so I get really high anxiety when I am in the car with someone to the point where they have to stop the car at times... I was in the military [Army] for special forces and there are times when if I feel like a car is following me it will be a trigger and I will get really paranoid".

If individual/family report traumatic events for individual, describe results of PTSD screening:
Harry reports "

Individual/family wish to address issues related to abuse/neglect and/or other traumas? ☐ N/A ☒ Yes ☐ No

Legal

Current/past history of legal involvement (e.g., divorce, child custody, bankruptcy, incarceration, probation/parole, current court pending, court orders, assaults, domestic violence, Becca Bill, dependency, JRS/DOC, etc.):

☐ Denied ☒ Yes, describe below

Harry reports "The divorce and and my car being impounded".

Adult individual is under Department of Corrections supervision? ☒ Denied ☐ Yes

If "yes", individual is court ordered to mental health treatment? ☐ Denied ☐ Yes ☐ Unsure

If "yes", copy of Court Order obtained? ☐ Yes ☐ No

Individual is on Least Restrictive Alternative (LRA) or Conditional Release (CR)? ☒ Denied ☐ Yes

If "yes", copy of LRA/CR obtained? ☐ Yes ☐ No

Start Date:

End Date:

Specifics of Court Order:

CCO Name:

Phone:

For Youth (if applicable):

Juvenile Probation Counselor Name:

Phone:

Child Welfare Services/CPS Social Worker Name:

Phone: